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*Attorney for Plaintiff: Meryl Pomponio*

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

**MERYL POMPONIO,**

Plaintiff,

v.

**MAROKE INC**, as an entity and doing business as  
“Quality Auto Dealer”, **NINA A. ANTUNES**,  
**ALAN ANTUNES**, and **DOES 1-50**, Inclusive,

Defendants.

Case No.:

**COMPLAINT BY MERYL POMPONIO  
AGAINST MAROKE INC, *et al.*, FOR  
DAMAGES AND INJUNCTIVE RELIEF  
RESULTING FROM VIOLATIONS OF 1)  
TITLE III OF THE AMERICANS WITH  
DISABILITIES ACT OF 1990; 2) THE UNRUH  
CIVIL RIGHTS ACT; and 3) THE  
CALIFORNIA DISABLED PERSONS ACT.**

[42 U.S.C. §§ 12101-12213; Cal. Civ. Code §§ 51,  
52, 54, 54.1, 54.2 and 54.3.]

Comes now the Plaintiff, MERYL POMPONIO, (hereafter, “Ms. Pomponio” or “Plaintiff”) through her Attorney, DANIEL MALAKAUSKAS, 7345 South Durango Drive, Suite B-107-240, Las Vegas, NV 89113; Telephone: (866) 790-2242; Facsimile: (888) 802-2440; who, having been denied her civil rights, hereby respectfully alleges, avers, and complains as follows:

**THIS COURT CAN GRANT JUSTICE TO A DISABLED INDIVIDUAL**

**COMPLAINT BY POMPONIO AGAINST MAROKE INC, *ET AL.*, FOR DAMAGES AND INJUNCTIVE RELIEF**

1           1.     Mrs. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic  
2     Syndrome. Due to Mrs. Pomponio's medical condition, Mrs. Pomponio is unable to walk and is  
3     confined to using a mobility device to complete her day to day activities.

4  
5           2.     In April 2018, Ms. Pomponio was denied the full and equal access to a public  
6     accommodation located at 28534 Mission Boulevard, Hayward, CA 94544.

7           3.     Ms. Pomponio now asks that this Court stand up for her rights under the Americans with  
8     Disabilities Act ("ADA"), the Unruh Civil Rights Act ("UCRA") and the California Disabled Persons  
9     Act ("CDPA").  
10

11           **THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA,**  
12           **OAKLAND DIVISION, HAS JURISDICTION AND IS THE PROPER VENUE FOR**  
13           **PLAINTIFF TO SEEK JUSTICE**

14           4.     The United States District Court has original federal question jurisdiction over this action  
15     pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) and (a)(4), for violations of the Americans with  
16     Disabilities Act, 42 U.S.C. §§ 12101, *et seq.* This Court has supplemental jurisdiction over all state  
17     claims, including, but not limited to, claims under the Unruh Civil Rights Act, Cal. Civ. Code § 51, *et*  
18     *seq.*, and/or the California Disabled Persons Act, Cal. Civ. Code §§ 54-55.3, pursuant to 28 U.S.C. §  
19     1367 as such acts not only expressly incorporate the Americans with Disabilities Act, but such state  
20     law claims also arose from the same nucleus of operative facts or transactions.

21  
22           5.     Venue in this Court is proper under 28 U.S.C. § 1391(b)(2) as the claims alleged herein  
23     arose in the Northern District, specifically at the real property located at 28534 Mission Boulevard,  
24     Hayward, CA 94544.

25  
26           6.     The Oakland Division of the Northern District of California, is the proper division  
27     because all claims herein arose at the real property located at 28534 Mission Boulevard, Hayward, CA  
28     94544.

**THE VICTIM AND THOSE RESPONSIBLE**

7. Ms. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic Syndrome. Due to Mrs. Pomponio's medical condition, Mrs. Pomponio is unable to walk and is confined to using a mobility device to complete her day to day activities. Ms. Pomponio is therefore a "person with a disability" and a "physically disabled person" and has a "disability" or "medical condition" pursuant to the rules and regulations of the ADA, specifically 42 U.S.C § 12102 and Cal. Civ. Code §§ 51 and 54.

8. Defendants, MAROKE INC, and Does 1-50 (hereafter, collectively or individually, "Tenant"), operate as a business establishment, hold themselves out to the public, and do business as "Quality Auto Dealer" at 28534 Mission Boulevard, Hayward, CA 94544, and have substantial control over the interior and exterior of the building, the parking lot, and all spaces adjacent to such building.

9. Defendants, NINA A. ANTUNES, ALAN ANTUNES, and Does 1-50 (hereafter, collectively or individually, "Landlord", in their commercial real estate investment, owner, or landlord capacity), own, operate, manage, and have substantial control over the real property, including the interior and exterior of the building, parking lot and all spaces adjacent to the buildings located at 28534 Mission Boulevard, Hayward, CA 94544.

10. Defendants, Does 26-50, are individuals, businesses, organizations, or entities which entered into a contract with Defendants, Tenant, Landlord, and/or Does 1-50, as property managers or franchisees for the real property and adjacent parking lot, and as such have substantial control over the real property located at 28534 Mission Boulevard, Hayward, CA 94544.

11. The true names and capacities of the Defendants named herein as Does 1-50, inclusive, whether individual, corporate, partnership, association, or otherwise, are unknown to Plaintiff who

1 therefore sues these Defendants by such fictitious names. Plaintiff requests leave of court to amend this  
 2 complaint to allege their true names and capacities at such times as they are ascertained.

3 12. Plaintiff is informed and believes and thereon alleges that each of the Defendants,  
 4 including Does 1-50, caused and are responsible for the below described unlawful conduct and  
 5 resulting injuries by, among other things, personally participating in the unlawful conduct or acting  
 6 jointly or conspiring with others who did so; by authorizing, acquiescing in or setting in motion  
 7 policies, plans or actions that led to the unlawful conduct; by failing to take action to prevent the  
 8 unlawful conduct; by failing and refusing with deliberate indifference to Plaintiff's rights to equal  
 9 access to public spaces; and by ratifying the unlawful conduct that occurred by agents, and officers or  
 10 entities under their direction and control.  
 11  
 12

13  
 14 **MS. POMPONIO WAS DENIED EQUAL ACCESS TO A**  
 15 **PUBLIC ACCOMMODATION AND NOW FIGHTS FOR ALL DISABLED**

16 13. Ms. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic  
 17 Syndrome. Due to Mrs. Pomponio's medical condition, Mrs. Pomponio is unable to walk and is  
 18 confined to using a mobility device to complete her day to day. Mrs. Pomponio is therefore a "person  
 19 with a disability" and a "disabled person" and has a "disability" or "medical condition" pursuant to  
 20 federal law, rules and regulations, specifically 42 U.S.C § 12102, and 28 C.F.R. § 36.104.  
 21

22 14. In April 2018, Ms. Pomponio desired to go to and use the services, and/or buy products  
 23 at "Quality Auto Dealer" which is located at 28534 Mission Boulevard, Hayward, CA 94544.

24 15. While in the parking lot adjacent to, surrounding, or while inside the business "Quality  
 25 Auto Dealer", Ms. Pomponio personally encountered barriers that interfered with her ability to use and  
 26 enjoy the goods, services, privileges and accommodations offered by the facilities. Specifically, while  
 27 visiting the business establishment, Ms. Pomponio had difficulty as there was no accessible parking  
 28

1 stall or access aisle. This caused Ms. Pomponio difficulty as not only did she not know where to park  
2 but the limited available open parking areas made it difficult to enter and exit her vehicle. In addition,  
3 the entrance ramp was too steep making it difficult to navigate in her wheeled device. Finally, the  
4 restroom failed to be accessible to Ms. Pomponio in her wheeled device given its dimensions furthering  
5 Ms. Pomponio's troubles.  
6

7 16. Despite Ms. Pomponio's wish to patronize the businesses in the future, the above-  
8 mentioned barriers constitute deterrents to access to the business, rendering the business' goods,  
9 services, facilities, privileges, advantages, and accommodations unavailable to physically disabled  
10 patrons such as herself.  
11

12 17. Ms. Pomponio alleges, on information and belief, that Defendants knew that such  
13 barriers existed and that Defendants' failure to remove the barriers was intentional as the particular  
14 barriers mentioned above were intuitive and obvious. Additionally, Defendants exercised control and  
15 dominion over the condition of the real property and building and had the financial resources to remove  
16 such barriers. Furthermore, Ms. Pomponio alleges, on information and belief, that such modifications  
17 were readily achievable as removal of the above barriers could have been achieved without much  
18 difficulty or expense.  
19

20 18. Ms. Pomponio brings this lawsuit to encourage Defendants to ensure their property is  
21 accessible to all.  
22

23 **FIRST CLAIM**  
24 **VIOLATION OF TITLE III OF THE ADA**  
25 **(As to all Defendants)**

26 19. Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every  
27 allegation contained in all prior and subsequent paragraphs.  
28

1           20. The parking lot and building at the real property known as 28534 Mission Boulevard,  
2 Hayward, CA 94544 is owned, controlled, operated, leased, and managed by Defendants: Tenant,  
3 Landlord, Does 1-50, or their agents. The business “Quality Auto Dealer”, including their parking lot,  
4 are open to the general public and as such is a “public accommodation” under 42 U.S.C. § 12181 and  
5 28 C.F.R. § 36.104.  
6

7           21. Pursuant to 42 U.S.C. § 12182(a), by owning, leasing, or operating the public  
8 accommodation known as “Quality Auto Dealer”, Defendants are prohibited from discriminating  
9 against Plaintiff by denying her, on the basis of her disability, the full and equal enjoyment of the goods,  
10 services, facilities, privileges, advantages, or accommodations offered by the facilities.  
11

12           22. In order to avoid discriminating against a disabled individual pursuant to 28 C.F.R. §  
13 36.101 and § 36.102, Defendants must ensure that such public accommodation is designed, constructed,  
14 and altered in compliance with the accessibility standards established by 28 C.F.R. § 36.101 *et seq.*,  
15 and have proper policies, practices, and procedures to ensure that individuals with disabilities are  
16 afforded equal access to the full and equal enjoyment of the goods, services, facilities, privileges,  
17 advantages, or accommodations offered by the public accommodation. 42 U.S.C. §§ 12181(9),  
18 12182(b)(2)(A)(iv) and (v), 12183(a)(1) and (2).  
19

20           23. Ms. Pomponio was disabled by her extreme medical condition: 1) Paraneoplastic  
21 Syndrome. Due to Mrs. Pomponio’s medical condition, Mrs. Pomponio is unable to walk and is  
22 confined to using a mobility device to complete her day to day. Mrs. Pomponio is therefore a “person  
23 with a disability” and a “disabled person” and has a “disability” or “medical condition” pursuant to  
24 federal law, rules and regulations, specifically 42 U.S.C § 12102, and 28 C.F.R. § 36.104. While at  
25 the interior, exterior, parking lot, or adjacent spaces, of the business known as “Quality Auto Dealer”,  
26  
27  
28

1 Plaintiff personally encountered a number of barriers that interfered with her ability, to use and enjoy  
2 the goods, services, privileges and accommodations offered at the facility.

3  
4 24. Specifically, Defendants failed to ensure that such real property was equally accessible  
5 to individuals with disabilities and medical conditions by having the following barriers at the real  
6 property:

- 7 a. The alleged unauthorized vehicle signage is not posted in a conspicuous place  
8 at the entrance to off-street parking or immediately adjacent to on-site  
9 accessible parking and visible from each parking space in violation of 2013  
10 CBC 11B-502.8 and 2016 CBC 11B-502.8;
- 11  
12 b. There are no accessible routes provided within the site from accessible parking  
13 spaces and accessible passenger loading zones, public streets and sidewalks,  
14 and public transportation stops to the accessible building or facility entrance  
15 they serve in violation of 1991 ADAAG 4.3.2(1), 2010 ADAS 206.2.1, 2013  
16 CBC 11B206.2.1 and 2016 CBC 11B-206.2.1;
- 17  
18 c. The accessible route connecting accessible buildings, accessible facilities,  
19 accessible elements, and accessible spaces on the same site is not provided in  
20 violation of 1991 ADAAG 4.1.2 (2), 2010 ADAS 206.2.2, 2013 CBC 11B-  
21 206.2.2 and 2016 CBC 11B-206.2.2;
- 22  
23 d. The ramp slope exceeds eight-point-three-three percent in violation of 1991  
24 ADAAG 4.1.2 (2), 2010 ADAS 206.2.2, 2013 CBC 11B-206.2.2 and 2016  
25 CBC 11B-206.2.2;
- 26  
27  
28

- e. There is no accessible parking space or access aisle provided in violation of 1991 ADAAG 4.6.3, 2010 ADAS 208.1, 2013 CBC 11B-208.1 2016 CBC 11B-208.1;
- f. There is no accessible parking space identification signage provided in violation of 1991 ADAAG 4.6.4, 2010 ADAS 502.6, 2013 CBC 11B-502.6 and 2016 CBC 11B-502.6;
- g. There is no “VAN ACCESSIBLE” designation parking space identification signage provided in violation of 1991 ADAAG 4.6.1, 2010 ADAS 502.6, 2013 CBC 11B-502.6, 2016 CBC 11B-502.6;
- h. There is no “MINIMUM FINE \$250” parking space identification signage provided in violation of 2013 CBC 11B-502.6.2, 2016 CBC 11B-502.6.2;
- i. There is a change in level within the required maneuvering clearance in front of the entrance door in violation of 1991 ADAAG 4.13.6, 2010 ADAS 404.2.4.4, 2013 CBC 11B-404.2.4.4 and 2016 CBC 11B404.2.4.4;
- j. The Tactile Exit signage is not provided in violation of 1991 ADAAG 4.1.3(16)(a), 2010 ADAS 216.4.1, 2013 CBC 11B-216.4.1 and 2016 CBC 11B-216.4.1;
- k. The public restroom is not accessible in violation of 1991 ADAAG 4.22, 2010 ADAS 213.1, 2013 CBC 11B-213.1 and 2016 CBC 11B-213.1;
- l. The restroom door hardware requires tight grasping, pinching, or twisting of the wrist to operate in violation of 1991 ADAAG 4.13.9, 2010 ADAS 404.2.7, 2013 CBC 11B-404.2.7 and 2016 CBC 11B-404.2.7;

- 1           m.     The clearance around the water closet is less than sixty inches by fifty-six inches  
2                     (60" x 56") in violation of 1991 ADAAG 4.16.2, 2010 ADAS 604.3.1, 2013  
3                     CBC 11B-604.3.1 and 2016 CBC 11B-604.3.1;  
4  
5           n.     The flush control is not located on the open side of the water closet in violation  
6                     of 1991 ADAAG 4.16.5, 2010 ADAS 604.6, 2013 CBC 11B-604.6 and 2016  
7                     CBC 11B-604.6;  
8  
9           o.     The water supply and drainpipes under the lavatory are not insulated or  
10                    otherwise configured to prevent contact in violation of 1991 ADAAG 4.19.4,  
11                    2010 ADAS 606.5, 2013 CBC 11B-606.5 and 2016 CBC 11B-606.5.

12           25.    As a direct and proximate cause of Defendants' conduct, Plaintiff, on the basis of her  
13                    disabilities, was denied the opportunity to participate in or benefit from a good, service, privilege,  
14                    individuals in violation of 42 U.S.C. § 12181.

15  
16           26.    Plaintiff seeks injunctive relief to prohibit Defendants' acts and omissions as complained  
17                    of herein which have the effect of wrongfully discriminating against Plaintiff and other members of the  
18                    public who are physically disabled from full and equal access to these public facilities. Specifically,  
19                    Plaintiff seeks injunctive relief ensuring that Defendants modify their real property to ensure that  
20                    disabled persons are not discriminated against in receiving equal access to goods, services, and facilities  
21                    as other more able-bodied persons.  
22

23  
24                               **SECOND CLAIM**  
25                               **VIOLATIONS OF CALIFORNIA CIVIL CODE § 51**  
                                  **(As to all Defendants)**

26           27.    Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every  
27                    allegation contained in all prior and subsequent paragraphs.  
28

28. Any violation of the ADA 42 U.S.C. §§ 12101-12213 also constitutes a violation of Cal. Civ. Code § 51(f) and § 52(a), thus independently justifying an award of damages and injunctive relief pursuant to California law.

29. On the basis of her disabilities, Plaintiff was denied the opportunity to participate in or benefit from a good, service, privilege, advantage or accommodation in a manner equal to that afforded to other non-disabled individuals which resulted in Plaintiff's difficulty, discomfort, or embarrassment. Therefore, pursuant to Cal. Civ. Code § 55.56(a) through (c), Plaintiff is entitled to attorneys' fees, costs, and damages of no less than four-thousand U.S. dollars (4,000 USD) for each and every violation.

**THIRD CLAIM  
VIOLATIONS OF CALIFORNIA CIVIL CODE § 54  
(As to all Defendants)**

30. Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every allegation contained in all prior and subsequent paragraphs.

31. Any violation of the ADA 42 U.S.C. §§ 12101-12213 also constitutes a violation of Cal. Civ. Code § 54.1(d) and § 54.3(a), thus independently justifying an award of damages and injunctive relief pursuant to California law.

32. On the basis of her disabilities, Plaintiff was denied the opportunity to participate in or benefit from a good, service, privilege, advantage or accommodation in a manner equal to that afforded to other non-disabled individuals, which resulted in Plaintiff's difficulty, discomfort or embarrassment. Therefore, pursuant to Cal. Civ. Code § 55.56(a) through (c), Plaintiff is entitled to attorneys' fees, costs, and damages on no less than one-thousand U.S. dollars (1,000 USD) for each and every violation.

**PRAYER**

WHEREFORE, Plaintiff prays the following:

1. For injunctive relief directing Defendants to modify their facilities and policies as required by law to comply with ADA regulations, including the ADAAG where required; institute policy to enable Plaintiff to use goods and services offered to the non-disabled public; provide adequate access to all citizens, including persons with disabilities; issue a permanent injunction directing Defendants to maintain their facilities usable by Plaintiff and similarly situated person with disabilities in compliance with federal regulations, and which provide full and equal access, as required by law;

2. Retain jurisdiction over Defendants until such time as the Court is satisfied that Defendants' unlawful policies, practices, acts and omissions, and maintenance of inaccessible public facilities as complained of herein no longer occur and will not recur;

3. Award Plaintiff all appropriate damages, including, but not limited to, either statutory damages of no less than four-thousand U.S. dollars (4,000 USD) for each and every violation of Cal. Civ. Code § 51, or no less than one-thousand U.S. dollars (1,000 USD) for each and every violation of Cal. Civ. Code § 54, with either Cal. Civ. Code § 51 or § 54 being elected prior to, or at, trial, but not both, and general damages in an amount within the jurisdiction of the Court, according to proof;

4. Award Plaintiff all litigation expenses and costs of this proceeding, and all reasonable attorneys' fees as provided by law, including but not limited to, 42 U.S.C. § 12205, Cal. Civ. Code §§ 52 and 54.3; and

5. Grant such other and further relief as this Court may deem just and proper.

Dated: December 16<sup>th</sup>, 2019

/s/ Daniel Malakauskas  
By: DANIEL MALAKAUSKAS, of,  
MALAKAUSKAS LAW, APC,  
Attorney for PLAINTIFF